

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1941.02B
COMPLAINT INVESTIGATOR:	Connie Rahe
DATE OF COMPLAINT:	August 19, 2002
DATE OF REPORT:	September 18, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 26, 2002

COMPLAINT ISSUES:

Whether the Gary Community School Corporation violated:

511 IAC 7-27-4(a)(3) by failing to convene a case conference committee (CCC) meeting at the request of the parent at the beginning of the 2001-2002 school year.

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP), dated February 25, 2002, as written, specifically, by not providing speech services for thirty (30) minutes, two times per week, from February 25, 2002, through June 2, 2002.

511 IAC 7-27-9(a)(11) by failing to place the Student in a class with the Student's chronological peers.

511 IAC 7-28-1(o) by failing to provide transportation, per the Student's IEP dated February 25, 2002, to and from school.

FINDINGS OF FACT:

1. The student (the Student) is 7 years of age, has completed grade one, and has been determined eligible for special education and related services under the category of communication disorder in kindergarten, school year 2000 to 2001, and eligibility for services under the category of mild mental disability (MiMH) on February 25, 2002.
2. The Complainant contends that the School failed to convene a case conference committee (CCC) meeting upon a verbal request at the beginning of the 2001 to 2002 school year (unspecified date) and upon a subsequent letter to the principal, dated August 22, 2001, which requested an IEP be developed as soon as possible for the Student, who had recently been diagnosed with ADHD and was on medication. The letter also stated that the local comprehensive mental health center had diagnosed the new disability and had provided documentation. The School's handwritten note on their copy of the Complainant's letter stated that the Complainant was contacted on August 24, 2001, with an explanation that an attention deficit hyperactivity (ADHD) diagnosis does not warrant calling a case conference.
3. The Complainant contends that from February 25, 2002, through the end of the school year, the Student did not receive services under communication disorder two times per week for 30 minutes per session in compliance with the Student's IEP dated February 25, 2002. The School provided an explanation that the speech-language pathologist was not present at the February 25 CCC meeting when the Student's IEP

was revised, and continued to provide services one time per week for 30 minutes per session, the level which was written in the previous IEP, dated May 9, 2001.

4. The Complainant contends that services under the MiMH category were not initiated until the last grading period of the school year. The Student's IEP listed February 25, 2002, as the anticipated starting date of those services. The School provided a form dated April 9, 2002, that stated it was a "Parent Notification for New Special Education Placement," and stated that, "The Special Education Department had completed processing (the Student's) IEP. The placement will be effective beginning April 9, 2002.
5. The Complainant contends that the School failed to place the Student in a special education classroom with peers of her chronological age when the Student was initially placed in the MiMH self-contained classroom. The Complainant did not indicate that the age range was preventing the teacher from implementing the Student's IEP, rather, the Student was modeling inappropriate behavior exhibited by the older students. The School provided a class list of students and their ages as follows:
 - 1st grade – 2 students;
 - 2nd grade – 1 student;
 - 3rd grade – 2 students;
 - 4th grade – 1 student;
 - 5th grade – 2 students; and
 - Total = 8 students in the self-contained MiMH classroom.
6. The School provided the form labeled "Parent Notification for New Special Education Placement," dated April 9, 2002, which stated that, "The Special Education Department had completed processing (the Student's) IEP. The placement would be at the home school; therefore, no special transportation is necessary and will not be provided. " In a letter of explanation, the School acknowledged that the CCC meeting on February 25, 2002, had agreed to transportation as a related service for the Student. The letter stated that the School "does not bus MiMH students who are in their home schools." The Student's IEP of February 25, 2002, states that special transportation will be provided from February 25, 2002, to June, 2002, and will be daily to and from school.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School failed to comply with timelines, upon receipt of the parent's written referral dated August 22, 2001, to convene a case conference committee (CCC) meeting to determine eligibility for special education and related services. Therefore, a violation of 511 IAC 7-27-4(a)(3) is found.
2. Findings of Fact #3 and #4 indicate that the School failed to provide services under communication disorder two times per week, as specified in the IEP, and failed to initiate MiMH services, as specified in the February 25, 2002, IEP. Such service did not begin until after April 9, 2002. Therefore, a violation of 511 IAC 7-27-7 is found for failing to implement the Student's IEP with the requisite frequency of services and for failing to implement the required services in a timely manner.
3. Finding of Fact #5 indicates that the School has provided a classroom with a limited number of students enrolled who range in ages commensurate with other Students who are enrolled in grades 1 through 5. In addition, the Complainant does not contend that the Student was adversely harmed or deprived of instruction because of the age range present in the classroom. Therefore, no violation of 511 IAC 7-27-9(a)(11) is found for failing to place the Student in a class with the Student's chronological peers.

4. Finding of Fact #6 indicates that the School failed to provide transportation to and from school in accordance with the Student's IEP dated February 25, 2002. While the School may develop a policy regarding transportation to students not eligible for special education programs, it is the responsibility of the CCC to determine if transportation as a related service is required for students receiving special education services. Therefore, a violation of 511 IAC 7-28-1(o) is found for failing to provide transportation in a timely manner, to and from school, per the Student's IEP dated February 25, 2002.

The Department of Education, Division of Exceptional Learners requires the following corrective actions based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Gary Community School Corporation shall:

1. Send a written reminder to all school administrators and special education personnel, including speech-language pathologists, stating:
 - a. the requirements of 511 IAC 7-27-4, with emphasis on the requirement to comply with timelines, upon receipt of the parent's written referral, to convene a case conference committee meeting to determine eligibility for special education and related services; and
 - b. the requirements of 511 IAC 7-27-7, with emphasis on the requirement to provide services with the frequency, and upon the initiation day, month, and year that the case conference committee has included in all students' IEPs. The reminder shall also state the corporation procedures to ensure that required IEP services are provided with the required frequency, intensity, duration, and location, and that services are initiated within the timeline requirements of Article 7.
2. Convene the CCC to:
 - a. Review the Student's transportation needs to determine if the Student requires special transportation as a related service to arrive safely at school, with either the School providing transportation, or the parents having the option to provide the transportation and receive compensation for their transportation services.
 - b. Determine whether, and to what extent, compensatory services are to be provided as a result of the failure to implement the Student's IEP, with regard to the failure to provide CD services two times per week, and with regard to the extended delay in initiating special education services after parent permission had been granted. The case conference committee's discussion and consideration of compensatory services shall be clearly delineated in the CCC report.

A copy of both: 1.) the written memorandum with a list of those who received them, and 2.) a copy of the Student's IEP clearly addressing transportation and compensatory services, shall be submitted to the Division no later than October 7, 2002.